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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,344	09/27/2001	Brian Schmitz	SI-30983(1)	3712
22202	7590	02/10/2004	EXAMINER	
WHYTE HIRSCHBOECK DUDEK S C			YEUNG, GEORGE CHAN PUI	
555 EAST WELLS STREET			ART UNIT	
SUITE 1900			PAPER NUMBER	
MILWAUKEE, WI 53202			1761	

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/965,344

Applicant(s)

SCHMITZ ET AL.

Examiner

George C Yeung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 ~~is/are~~ pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-17, 19, 20, 22, 24, 26, 28 and 29 ~~is/are~~ allowed.
- 6) ☒ Claim(s) 18, 21, 23, 25 and 27 ~~is/are~~ rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Drawing Objections***

Figures 1-3, 4A-4C and 5A-5D are objected to as being informal. Applicants are requested to submit new, formal drawings in response to this Office action.

### ***Claim rejections – 35 USC § 112***

Claims 18, 21, 23, 25 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention for the following reasons:

1. There is no antecedent basis for "the cheese column portion" as recited in claim 18, line 2,
2. There is no antecedent basis for "the rack" as recited in claims 21 and 25, line 1 of each.
3. There is no antecedent basis for "the elevator" as recited in claims 23 and 27, line 2 of each.
4. There is also no antecedent basis for "the food portion" as recited in claim 23, lines 2-3.

***Allowable Subject Matter***

Claims 1-17, 19, 20, 22, 24, 26, 28 and 29 are allowed. Claims 18, 21, 23, 25, and 27 would be allowable if amended to overcome the rejections under 35 U.S.C. 112 set forth in this Office action.

***Prior Art Citation***

The Brockwell et al patent, the Greenfield et al patent and the Pittelko patent are cited to show conventional cheese-block formers.

***Reasons for Allowance***

The following is an examiner's statement of reasons for allowance: the prior art of record does not show or suggest the combination of structural elements set forth in claims 1, 8, 12, 16, 28 and 29, and the combination of method steps set forth in claims 20 and 24 for the portioning of a food product, such as chess, into portions of predetermined size, especially the claimed use of a rotary-to-linear actuator connected to the platform to actuate movement of the platform so as to adjust the actual food product height to correspond with a predetermined food product height relative to the cutting member for portioning the food product at the predetermined height to obtain a food product portion having a desired size.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Yeung whose telephone number is (571)


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272-1412. The examiner can normally be reached on Monday-Friday from 10:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0987.

G. Yeung/af  
January 30, 2004



**GEORGE C. YEUNG**  
**PRIMARY EXAMINER**